

Members

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Sen. Randall Head
Sen. Timothy Lanane
Sen. Lonnie Randolph
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COMMISSION ON COURTS

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MEETING MINUTES¹

Meeting Date: October 1, 2009
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Linda Lawson, Chairperson; Rep. Matt Pierce; Rep. Kathy Richardson; Rep. Eric Koch; Sen. Richard Bray, Vice-Chairperson; Sen. Randall Head; Sen. Timothy Lanane; Judge John Baker (for Chief Justice Randall Shepard); Thomas Felts.

Members Absent: Sen. Lonnie Randolph; David Whicker; Jill Jackson; Michael J. Kruk.

Representative Linda Lawson, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:36 P.M.

After a brief introduction of the members, Rep. Lawson stated the Commission would take testimony on probation issues.

The first person to testify was Andrew Berger, Legislative Director of the Association of Indiana Counties (AIC). Mr. Berger said the AIC supports consolidation of probation

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services within counties to control costs and save counties money. He said while it might be difficult to combine certain probation services, such as juvenile and adult probation programs, there otherwise should not be multiple probation departments within a single county. He stated Marion County, the most populous county in the state, had only one probation department so it should be possible for other counties to consolidate.

The next person to testify was Jane Seigel, Executive Director of the Indiana Judicial Center. Ms. Seigel distributed the November 2000 final report of the Probation Services Study Committee (<http://www.in.gov/legislative/interim/committee/2000/committees/reports/PROB3B1.pdf>) and a list of probation facts (Handout #1) to Commission members. She indicated most of the recommendations in this final report had been put in place.

Ms. Seigel said the current probation system in which the state establishes probation standards while the counties were responsible for funding probation services caused considerable "tension." She went on to say that while consolidation of probation departments was "making great strides," in most counties probation funding was "in dire straits."

Ms. Seigel continued by stating that there was also a better way to fund probation officer salaries than using probation user fees collected by officers from persons on probation. She suggested if the state funded probation services, and perhaps the operation of all trial courts, it could solve several current problems.

The next person to testify was Judge Mark Stoner of the Marion Superior Court and Chairperson of the State Probation Committee of the Indiana Judicial Conference. Judge Stoner stated probation was the most valuable and cost effective tool judges have when dealing with felony offenders. However, he stated judges do not have unlimited resources and probation is best used for low level non-violent offenders.

Judge Stoner stated few counties currently had split probation departments and he was not certain legislative action was needed to address the issue. He said he also felt that if there were any outstanding probation related issues, it would be best to handle them through judicial rather than legislative action.

Judge Stoner continued by stating he also thought it was time for the entire trial court system to be state funded. He questioned whether the current system was just since judicial resources were not equal from county to county.

The next person to testify was Don Travis, Chief Probation Officer from Howard County and President of the Probation Officers Professional Association of Indiana. He stated Howard County had recently consolidated probation services. However, he stated there was a "vast difference" between juvenile and adult probation services which can make consolidation difficult. He said juvenile probation officers not only support the juvenile but the families of the juvenile as well.

The next person to testify was Judge Peter Nemeth of the St. Joseph Probate Court. Judge Nemeth said he had supervised both juvenile and adult probation departments. He stated the two systems were different in that the adult probation system involved punishment while the juvenile system emphasized treatment and rehabilitation. He also said that those involved with the juvenile system had to work closely with families. Judge Nemeth stated that juvenile and adult probation systems should not be consolidated.

Rep. Lawson then stated the Commission would consider issues related to

placement of juveniles in out-of-state rehabilitation and treatment programs by juvenile court judges.

The first person to testify was Judge James Payne, Director of the Indiana Department of Child Services (DCS). Judge Payne stated the goals were to keep juveniles in the home or as close to home as possible and reunite them with their families as quickly as possible if they must be removed from their homes.

Judge Payne said HEA 1001-2008 "changed the landscape" when it provided that the state would take over funding for all child welfare costs as of January 1, 2009. He continued by stating there was tremendous capacity in the state to keep every child who needs a treatment program in Indiana. He said it was the "best practice" to keep children close to home and allow parental involvement. He stated that, in other states, out-of-state placement was the exception rather than the rule.

Judge Baker then stated HEA 1001-2009(ss) enacted during the 2009 Special Session had moved decisions concerning juvenile placements in out-of-state programs out of the judicial branch and into the executive branch. He said that bill had amended the law to say the state is not responsible for payment of any costs concerning the placement of juveniles by a juvenile court in a facility located outside of Indiana if the placement is not recommended or approved by the Director of the DCS.

Judge Payne stated a juvenile judge may still place a juvenile in an out-of-state program, but the county in which the judge has jurisdiction must pay the expenses of the placement if the DCS finds there were programs in Indiana that could have served the juvenile.

Judge Baker then stated the changes in HEA 1001-2009(ss) limited judicial discretion without judicial input.

Judge Payne then distributed to Commission members the Indiana Association of Residential Child Care Agencies (IARCCA) report entitled "Comparisons of Services: Out-of-State Providers to Indiana Providers," the IARCCA Outcome Measures Project 2008 Report, and the IARCCA 2009 Member Resource Directory of Services for Family and Children (Handout #2).

Rep. Lawson stated she was concerned that these juvenile placement amendments in HEA 1001-2009(ss) were made during the "last seconds" of the 2009 Special Session. She said the Commission needs to take a closer look at these issues.

The next person to testify was Judge Loretta Rush of the Tippecanoe Superior Court. She stated she agreed with most of what Judge Payne had stated except for who has the final say in the out-of-state placement of juveniles. She said it was a step backwards for the juvenile justice system to take this placement discretion away from judges and give it to a state executive branch agency.

The next person to testify was Judge Nemeth. He said the state should do what is in the best interest of a child whether that means placing the child in a program in Indiana or out of the state. He said sometimes it was not in the best interest of a child to keep them in their home or place them close to home.

Judge Nemeth continued by stating DCS does not want to get involved in these cases, but only wants to "look at a piece of paper" before making a decision. He stated that executive branch review of these cases was a "charade" and created a separation of powers issue under the Indiana Constitution.

The next person to testify was Judge Mary Beth Bonaventura of the Lake Superior Court. Judge Bonaventura said she had recently been Chairperson of the Child Welfare Improvement Committee of the Indiana State Court Improvement Program. She reiterated that it was necessary for juvenile courts to do what was in the best interests of children. She also questioned why placement of juveniles in programs out-of-state was now treated differently than placement of juveniles in programs in Indiana.

Rep. Lawson then stated the Commission would take testimony concerning liability for asbestos related illnesses.

The first person to testify was Russell Sipes, an attorney with the law firm of George & Sipes, LLC. Mr. Sipes said he had represented victims of asbestos related diseases for approximately 25 years. He briefly discussed HB 1167-2009 (introduced by Rep. Dennis Tyler) concerning civil actions based on exposure to asbestos. He said when the bill reached the Senate, it was ultimately determined the issue needed more study.

Mr. Sipes said that, according to the United States Centers for Disease Control, 55 to 70 people in Indiana die from mesothelioma each year. He stated an Indiana Supreme Court decision in 2003 had made the statute concerning product liability actions based on exposure to asbestos (IC 34-20-3-2) virtually "meaningless." He said he had come before the Commission because this decision had taken away the ability of too many people to have their day in court. He said exposure to asbestos causes mesothelioma and other diseases that take decades to develop and, under current Indiana statutes, the time for persons in Indiana to bring a claim of any kind ends long before these diseases even start to show symptoms.

Mr. Sipes continued by stating that Indiana is the only state in the nation that virtually eliminates by statute any claim for recovery for asbestos related diseases. He said people in Indiana who are dying 30 to 40 years after exposure to asbestos want the opportunity to go to court.

Mr. Sipes said opponents of the proposed changes to Indiana law say the changes would eliminate jobs and cause insurance rates to increase. He stated this was not true because the jobs these people were performing when they were exposed to asbestos no longer exist and insurance policies that would be affected were in effect in the 1960's, 1970's and 1980's.

Mr. Sipes stated the real issue was about people being killed and having a right to find out if someone is responsible for their deaths. He said if people are responsible, they should not escape liability just because enough time has passed. He said the current system is not just or fair and is not good public policy.

The next person to testify was Sen. John Waterman. He described how when he was a student, he had a job removing asbestos from boilers. He said the asbestos was simply torn or pounded off pipes and other surfaces, which resulted in him and his coworkers being covered in asbestos dust.

Sen. Waterman said he had not been diagnosed with mesothelioma but had been diagnosed with fibrosis, which he considered a "ticking time bomb." He said these issues needed further discussion.

The next person to testify was Mrs. Dorothy Kuykendall. Mrs. Kuykendall stated she was 76 years old and was from West Terre Haute, Indiana. She said she handled asbestos when she was a worker at Glas-Col Apparatus Co. She stated in April 2009 she was

diagnosed with mesothelioma even though the last time she handled any asbestos was in 1975.

Mrs. Kuykendall continued by stating she cannot get workers compensation and she cannot sue anyone. She said because of that, Medicare and her family are responsible for hundreds of thousands of dollars in medical expenses as a result of her disease.

Mrs. Kuykendall stated her husband is 89 and she thought she would take care of him until he died. She said he was taking care of her now and wondered what would happen to him when she's gone. She asked the Commission to change the law to give people like her "some hope."

In response to questions from Commission members, Mrs. Kuykendall said she had not had any symptoms until April 2009. She said at first she thought she had a heart problem until further tests revealed the mesothelioma.

The next person to testify was Sharon Wilson from Greenwood, Indiana. She stated her husband, James Wilson, died in April 2008 from mesothelioma at the age of 67. She said he had been an award winning teacher for many years, but was exposed to asbestos as a construction worker and that caused his disease.

Mrs. Wilson distributed letters (Handout #3) from her and Dr. Beurt SerVaas concerning her husband and HB 1167-2009. She asked the Commission to let people like her husband have a chance to find out if someone is responsible for their illnesses.

The next person to testify was Tony Peyton. Mr. Peyton stated he was 63 and a retired construction worker. He said he had contracted mesothelioma as a result of asbestos exposure during his construction career. He stated when he was working during the 1960's and 1970's, he was never told working with asbestos was dangerous. Mr. Peyton said he had surgery to treat his illness, but his disease had subsequently returned.

Mr. Peyton said persons who worked in Indiana and Kentucky and were exposed to asbestos had a right to obtain workers compensation in Kentucky and bring civil lawsuits in Kentucky courts. However, he said persons who worked only in Indiana had no such rights. Mr. Peyton said he was appearing before the Commission to speak for persons like John Reese who died from an asbestos related illness last week but who had only worked in Indiana and did not have these rights.

The next person to testify was Dr. David Mares from Anderson, Indiana. Dr. Mares said there had been many industries based in the Anderson area in which workers were exposed to asbestos. He said he had several patients with stories similar to the ones heard during previous testimony.

Dr. Mares described asbestos related diseases and their causes, symptoms, and treatments to Commission members. He stated the latency period could be 50 to 70 years after an asbestos related injury occurs.

In response to questions from Commission members, Dr. Mares stated there were very few other causes for mesothelioma other than asbestos. He said more than 99% of mesothelioma cases were caused by asbestos exposure. He stated smoking does not play a role in contracting mesothelioma. Dr. Mares also said that once mesothelioma symptoms appear, most persons only had six months to two years to live. Dr. Mares also said asbestos is reasonably safe if it is encapsulated and not broken loose.

The next person to testify was Nancy Guyott, Executive Director and Counsel for the Indiana AFL-CIO. She said she favored extending the statute of repose for these types of latent diseases. She stated Indiana workers should have the opportunity to exercise the same rights and remedies workers in border states have. She stated she also felt incidents of these latent diseases were being under reported since no report occurs until the death of the worker, which occurs decades after the worker's exposure.

Mr. Sipes then distributed a booklet of material to Commission members entitled "Indiana Time Limits on Claims for Diseases Caused by Exposure to Asbestos" (Handout # 4). He stated the booklet contained proposals to amend IC 22-3-7-9 to change workers compensation limits to give workers diagnosed with an asbestos disease two years from the date the worker knew or should have known of their disability to file a claim, amend IC 32-30-1-5 to maintain the current 10 year time limit to protect contractors, architects, and premises owners, but allow people exposed to asbestos during that time to file a case within two years of their diagnosis, and amend IC 34-20-3-2 to restore the interpretation of that statute before the 2003 Indiana Supreme Court decision and allow actions against companies that sold asbestos products to be filed within two years of the diagnosis of a disease.

In response to questions from Commission members, Mr. Sipes stated IC 34-20-3-2 referred to persons who "mined and sold" asbestos. He stated that in 2003 the Indiana Supreme Court decision interpreted the statute to mean it only applied to persons who did both mining and selling of asbestos instead of companies that only engaged in one of those activities.

Mr. Sipes also stated if a company subject to liability was defunct, it may still be possible to bring a workers compensation claim or a civil action against an insurance company who issued a policy for the defunct company. He also said a seller of asbestos was not strictly liable for merely selling asbestos. He said it was necessary in an action to show a seller was negligent when they sold asbestos.

Rep. Lawson then stated Diana Reese, widow of John Reese who was in attendance at the meeting, and the entire Reese family had the condolences of the Commission. She also thanked Mrs. Kuykendall and Mr. Peyton for having the courage to testify.

After a brief Commission discussion, Rep. Lawson said the next Commission meeting would occur on Thursday, October 15, at 9:00 A.M.

Rep. Lawson adjourned the meeting at 4:28 P.M.